

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

W. E. Aubuchon Co., Inc., et al.,

Plaintiffs,

v.

**CIVIL ACTION
NO. 05-40159**

BeneFirst, LLC,

Defendant.

SCHEDULING ORDER

SAYLOR, J.

This Scheduling Order is intended to provide a reasonable timetable for discovery and motion practice in order to help ensure a fair and just resolution of this matter without undue expense or delay.

Discovery in this case shall proceed in phases. The initial phase is designed to permit the parties, as stated at the scheduling conference, to engage an independent auditor to conduct an examination of the relevant facts and to permit that examination to be concluded.

The deadlines below are designed to accommodate that possibility. If at any time before the next scheduling conference the parties determine that an independent audit will not be conducted, they shall promptly notify the Court so that it may schedule a status conference on the matter to reconsider the discovery and motion schedule.

There may also be a dispute as to whether all or part of a prior audit conducted by or on behalf of the plaintiff is privileged. If the prior audit documents are otherwise subject to production under the initial disclosure requirements of Rule 26(a)(1) and Local Rule 26.2(A), and any such documents are redacted or withheld from production on grounds of privilege, the plaintiffs shall produce a privilege log containing sufficient detail to permit reasonable litigation of the issue on or before March 1, 2006. Defendant may file a motion to compel production reasonably promptly thereafter.

Before the next scheduling conference, the parties should submit a joint statement advising the Court of their progress and proposing further discovery deadlines.

Timetable for Discovery and Motion Practice

Pursuant to Rule 16(b) of the Federal Rules of Civil Procedure and Local Rule 16.1(F), it is hereby ORDERED that:

1. **Initial Disclosures.** Initial disclosures required by Fed. R. Civ. P. 26(a)(1) must be completed by 3/1/06.
2. **Scheduling Conference.** A scheduling conference will be held on 4/7/06 at 10:15 a.m..

Procedural Provisions

1. **Extension of Deadlines.** Motions to extend or modify deadlines will be granted only for good cause shown. Good cause may be shown where discovery has been delayed or a deadline otherwise has been affected by the time taken by the court to consider a motion. All motions to extend shall contain a brief statement of the reasons for the request; a summary of the discovery, if any, that remains to be taken; and a specific date when the requesting party expects to complete the additional discovery, join other parties, amend the pleadings, or file a motion.
2. **Reply Memoranda.** Parties need not seek leave of court to file a reply memorandum in response to an opposition to any motion, provided that such a reply memorandum does not exceed twelve pages, double-spaced, and is filed within seven days (excluding intermediate Saturdays, Sundays, and legal holidays) after service of the opposition memorandum. Parties may otherwise file reply or surreply memoranda only with leave of court. When such leave is sought, the moving party may file a proposed reply or surreply memorandum with the motion for leave.
3. **Additional Conferences.** Upon request of counsel, or at the court's own initiative, additional case-management or status conferences may be scheduled. Parties may request telephonic conferences where appropriate to avoid undue inconvenience or expense.
4. **Early Resolution of Issues.** The court recognizes that, in some cases, resolution of one or more preliminary issues may remove a significant impediment to settlement or otherwise expedite resolution of the case. Counsel are encouraged to identify any such issues and to make appropriate motions at an early stage in the litigation.

5. **Pretrial Conference.** Lead trial counsel are required to attend any pretrial conference.

By the Court,

2/3/06

Date

/s/ Martin Castles

Deputy Clerk